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## Criminal Law—Amendment of Indictment

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ity granted must be as broad as the privilege. Hence, his testimony could not be grounds for either citation or indictment. Although the Court did not specifically hold §2447 unconstitutional, this decision will virtually vitiate any possible effect of the statute.

### *Amendment of Indictment*

There are two methods of indictment procedure in New York; the first and older is a long form indictment,<sup>19</sup> which has been in use since 1881. The second method, authorizing a simplified indictment,<sup>20</sup> was enacted in 1929. Included in the chapter outlining the simplified indictment is a section permitting the indictment to be amended according to the proof, if the defendant cannot thereby be prejudiced.<sup>21</sup> The amendment may even add new counts to the indictment where it appears that the new crimes to be charged relate to the transactions which form the basis for the indictment.<sup>22</sup>

In *People v. Ercole*,<sup>23</sup> a long form indictment for larceny was returned which failed to allege false or fraudulent representations as required by statute.<sup>24</sup> On trial, and before proof of the larceny, an amendment of the indictment was permitted, to add new counts which were in conformity with the larceny statute.<sup>25</sup> The majority of the Court of Appeals felt that the chapter on simplified indictments was meant to relate only to indictments found under that chapter and could not be used to amend a long form indictment such as was used in the instant case. Only the amendment sections existing independently of the simplified indictment chapter<sup>26</sup> may be used to affect a long form indictment.

The dissent maintains that § 295-j is independent of the simplified indictment chapter and applies to any indictment, basing this argument largely on dicta found in previous rulings of the court.<sup>27</sup> The statutory scheme does not seem to support this contention.

### *Automobiles: Junior Operator*

In *People v. Harms*,<sup>28</sup> defendant, a holder of a junior operator's license, was

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19. N. Y. CODE CRIM. PROC. §§273-292-a.

20. *Id.*, §§295 (b)-295 (k).

21. *Id.*, §295 (j).

22. *Ibid.*

23. 308 N. Y. 425, 126 N. E. 2d 543 (1955).

24. N. Y. PENAL LAW §1290-a.

25. *Id.*, §1290.

26. N. Y. CODE CRIM. PROC. §§285, 293, 542.

27. *People ex rel. Prince v. Brophy*, 273 N. Y. 90, 6 N. E. 2d 109 (1937); *People v. Miles*, 289 N. Y. 360, 45 N. E. 2d 910 (1942); *People ex rel. Poulos v. Mc Donnell*, 302 N.Y. 89, 96 N. E. 2d 614 (1951).

28. 308 N. Y. 35, 123 N. E. 2d 627 (1954).